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Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CRAIG OGANS, Plaintiff, vs. UNITED PARCEL SERVICE, INC. AND DOES 1 to 100, Defendants.	Case No. **DECLARATION OF ELIZABETH A. BROWN IN SUPPORT OF DEFENDANT UNITED PARCEL SERVICE, INC.'S NOTICE OF REMOVAL TO FEDERAL COURT**

I, Elizabeth A. Brown, declare as follows:

1. I am an attorney duly licensed to practice before this Court and before all of the Courts of the State of California. I am a Partner at the law firm of Grube Brown & Geidt LLP and counsel of record for Defendant United Parcel Service, Inc. ("UPS") in this action.

2. I have personal knowledge of the matters set forth in this declaration or know of them based on my review of documents maintained in the ordinary course of business by Grube Brown & Geidt LLP, and, if called as a witness, could and would testify as to their accuracy.

3. Attached to this declaration as Exhibit A is a true and correct copy of Plaintiff Craig Ogans's Complaint, filed in the Superior Court of California for the County of San Francisco on March 6, 2017.

4. Attached to this declaration as Exhibit B is a true and correct copy of the Notice of Service of Process on UPS, showing a service date of March 29, 2017.

5. Attached to this declaration as Exhibit C is a true and correct copy of the Notice to Adverse Parties of Removal of Civil Action, Exhibit A thereto (Notice of Removal) omitted from this declaration to avoid duplication.

6. Attached to this declaration as Exhibit D is a true and correct copy of the Notice to State Court of Removal of Civil Action, Exhibit A thereto (Notice of Removal) omitted from this declaration to avoid duplication.

7. Attached to this declaration as Exhibit E is a true and correct copy of the Superior Court of California for the County of San Francisco docket for this action that my office pulled from the Court website on April 24, 2017.

8. Exhibit A to UPS's concurrently-filed Notice of Removal is a true and correct copy of all publicly-available process, pleadings, or orders that were served on UPS in this action.

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 24th day of April, 2017, at San Francisco, California.

ELIZABETH A. BROWN

Exhibit A

Adam M. Rose (210880)
adam@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #2074
Calabasas, California 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-5160

Attorney for Plaintiff
Craig Ogans

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 06 2017

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CRAIG OGANS, Plaintiff, v. UNITED PARCEL SERVICE, INC., and DOES 1 to 100, Defendants.	NO. CGC-17-557418 COMPLAINT 1. FAIR LABOR STANDARDS ACT 2. WAGE AND HOUR VIOLATION 3. WAGE STATEMENT PENALTY 4. WAITING TIME PENALTY 5. MEAL AND REST BREAKS 6. UNFAIR COMPETITION

PRELIMINARY ALLEGATIONS

1. Plaintiff Craig Ogans ("Ogans") is a resident of San Francisco County.

2. Defendant United Parcel Service, Inc. is an Ohio corporation, with one of its California offices located in San Francisco County.

3. The defendants violated the Labor Code and Fair Labor Standards Act by not paying the plaintiff all wages owed, not paying overtime, not providing rest and meal breaks, and not providing accurate, itemized wage statements.

4. Industrial Welfare Commission Wage Order 9 applies, which governs the transportation industry. Specifically, Ogans worked as a driver for Defendants. establishment operated for … furnishing entertainment or recreation to the public …."

5. Plaintiff does not know the true names and capacities of defendant Does 1 to 100,

therefore use fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names when they are ascertained.

6. Plaintiff is informed and believe that each defendant was the agent, employee, and/or joint venture of the other, and they ratified each other's acts.

7. The following employment law violations occurred.

FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT VIOLATION

Against All Defendants

8. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

9. The Fair Labor Standards Act regulates payment of minimum and overtime wages.

10. An employee may file a lawsuit to recover for violations of the Fair Labor Standards Act pursuant to 29 USC § 216(b).

11. Per 29 USC § 216(b), an employee who brings a civil action under the FLSA may obtain backpay, liquidated damages, injunctive relief, interest, and attorney fees.

12. Liquidated damages under the Fair Labor Standards Act is double damages for wages due. (See *Reich v. New England Telecomm. Corp.* (2nd Cir. 1997) 121 F.3d 58, 71.)

13. Pursuant to 29 USC § 207, an employer must provide overtime wages when the employee works more than 40 hours per week.

14. Pursuant to 29 USC § 206, an employer must provide at least the minimum wage for all hours worked.

15. Since Defendants did not pay all compensation owed, Plaintiff is entitled to all remedies under the FLSA.

16. The plaintiff's activities were undertaken for the employers' benefit and controlled or required by the employers and, if performed outside scheduled work time, then it was also an integral and indispensable part of the employees' principal activities.

17. The hours of work performed by the plaintiff/employee was reasonable in relation to the principal activity and not de minimis.

SECOND CAUSE OF ACTION

WAGE AND HOUR VIOLATION

Against All Defendants

18. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

19. Defendants unlawfully did not pay the plaintiff/employee all wages owed as required by Labor Code sections 510 and 1194 and Wage Order 9.

20. Plaintiff is entitled to recover all minimum wage and overtime compensation that defendants did not pay as well as prejudgment interest from four years from the date of filing the complaint to the date judgment is entered.

21. Plaintiff is entitled to recover attorney fees and costs pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION

WAGE STATEMENT PENALTY

Against All Defendants

22. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

23. Labor Code section 226(a) provides every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, an itemized wage statement, showing all wages paid, including all deductions.

24. Defendants knowingly and intentionally did not furnish the plaintiff with accurate itemized statements required under Labor Code section 226(a).

25. Labor Code Section 226(e) provides that an employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which the violation occurs and then $100 per employee for each subsequent pay period, not to exceed $4,000 per employee.

26. Plaintiff seeks actual damages, costs, penalties and attorney fees under Labor Code section 226(g).

FOURTH CAUSE OF ACTION

WAITING TIME PENALTY

Against All Defendants

27. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

28. Labor Code section 203 provides for a waiting time penalty, which applies when an employer willfully does not pay the wages of an employee who is discharged or who quits. The waiting time penalty provides that the wages of the employee continue as a penalty at the employee's hourly rate until paid, not to exceed 30 days.

29. Defendants willfully did not pay Plaintiff all accrued wages after they stopped working for Defendants.

30. Plaintiff is entitled to 30 days of wages each as a waiting time penalty.

FIFTH CAUSE OF ACTION

MEAL AND REST BREAK VIOLATION

Against All Defendants

31. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

32. Labor Code sections 226.7 and 512 provides that no employer may require an employee to work during any meal or rest period the applicable Wage Order mandates.

33. Employers must authorize rest periods of specified minimum duration.

34. Defendants did not give mandatory rest breaks and meal breaks to the Plaintiff.

35. Labor Code section 226.7(c) provides an employer that does not provide rest and/or meal breaks must pay the employee one additional hour of premium pay at the employee's regular rate each time the break was not provided, which is what Plaintiff is owed.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

Against All Defendants

36. Plaintiff incorporates by reference paragraphs 1 to 7 of the complaint.

37. Business and Professions Code section 17200 defines unfair competition as unlawful, unfair, or fraudulent business acts or practices.

38. Defendants engaged in unfair competition by not paying all wages and premium pay due to the plaintiff.

39. Pursuant to Business and Professions Code section 17203, restitution applies.

40. Plaintiff requests attorney fees and costs pursuant to Code of Civil Procedure section 1021.5.

PRAYER

First Cause of Action

1. Relief under 29 USC § 216(b), including payment of unpaid minimum wages, unpaid overtime wages, up to an equal amount of liquidated damages for unpaid wages, interest, and attorney fees and costs.

Second Cause of Action

1. Payment of all unpaid minimum wage and overtime compensation
2. Attorney fees, costs, and prejudgment interest under Labor Code section 1194
3. Other relief the court deems proper

Third Cause of Action

1. Penalty under Labor Code section 226 not to exceed $4,000 for each plaintiff
2. Attorney fees and costs under Labor Code section 226
3. Other relief the court deems proper

Fourth Cause of Action

1. Up to 30 days of the plaintiff's wages pursuant to Labor Code section 203
2. Other relief the court deems proper

///

Fifth Cause of Action

1. Premium pay for each missed rest break and each missed meal break

4. Other relief the court deems proper

Sixth Cause of Action

1. Restitution of all wrongfully withheld wages and premium pay

2. Attorney fees under Code of Civil Procedure section 1021.5

3. Other relief the court deems proper

Date: February 27, 2017

LAW OFFICE OF ROBERT STARR

Adam Rose
Attorney for Plaintiff
Craig Ogans

Exhibit B

CORPORATION SERVICE COMPANY®

null / ALL
Transmittal Number: 16436957
Date Processed: 03/29/2017

Notice of Service of Process

Primary Contact: SOP UPS - United Parcel
SOP - PowerBrief - Wilmington
Sop - Scan
Suite 400 2711 Centerville Road
Wilmington, DE 19808

Electronic copy provided to: Tiffany Taylor
CSC Test
Sarah Moore
Bishop Martin
Jamilah Freeman

Entity:	United Parcel Service, Inc. Entity ID Number 2551129
Entity Served:	United Parcel Service Inc
Title of Action:	Craig Ogans vs. United Parcel Service, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court/Agency:	San Francisco County Superior Court, California
Case/Reference No:	CGC-17-557418
Jurisdiction Served:	California
Date Served on CSC:	03/29/2017
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Adam M. Rose 818-914-3433
Client Requested Information:	Matter Type: Other/NA

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

Exhibit C

GRUBE BROWN & GEIDT LLP
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ELIZABETH A. BROWN (SB# 235429)
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Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CRAIG OGANS,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC., and DOES 1 to 100,

Defendants.

Case No. CGC-17-557418

NOTICE TO ADVERSE PARTIES OF DEFENDANT UNITED PARCEL SERVICE, INC.'S NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT

Complaint Filed: March 6, 2017

TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 28, 2017, pursuant to 28 U.S.C. § 1446, Defendant United Parcel Service, Inc. filed a Notice of Removal of this action with the United States District Court for the Northern District of California.

A true copy of the Notice of Removal is attached hereto as Exhibit A and served herewith.

DATED: April 28, 2017

GRUBE BROWN & GEIDT LLP

By: Elizabeth A Brown /LYL
ELIZABETH A. BROWN

Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

PROOF OF SERVICE

I am employed in the City of San Francisco and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 601 Montgomery Street, Suite 1150, San Francisco, CA 94111.

On April 28, 2017, I served a copy of the within document(s):

NOTICE TO ADVERSE PARTIES OF DEFENDANT UNITED PARCEL SERVICE, INC.'S NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT

on the interested parties:

☐ VIA FAX: By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on the above date with postage thereon fully prepaid, at San Francisco, California.

☐ VIA OVERNIGHT SERVICE: By placing the document(s) listed above in a sealed _________ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a ________ agent for delivery.

☐ VIA PERSONAL SERVICE: By causing to be delivered the document(s) listed above to the person(s) at the address(es) set forth below.

☐ VIA E-MAIL: By transmitting a PDF version of the document(s) by e-mail to the person(s) set forth below using the e-mail address(es) indicated, pursuant to the parties' electronic service agreement.

ADAM M. ROSE
FRONTIER LAW CENTER
23901 Calabasas Road, Suite 2074
Calabasas, CA 91302

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2017, at San Francisco, California.

Janet Gogna

Exhibit D

GRUBE BROWN & GEIDT LLP
E. JEFFREY GRUBE (SB# 167324)
ELIZABETH A. BROWN (SB# 235429)
C. YEWLEH CHEE (SB# 281710)
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Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CRAIG OGANS, Plaintiff, vs. UNITED PARCEL SERVICE, INC., and DOES 1 to 100, Defendants.	Case No. CGC-17-557418 **NOTICE TO STATE COURT OF DEFENDANT UNITED PARCEL SERVICE, INC.'S NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT** Complaint Filed: March 6, 2017

TO THE CLERK OF THIS COURT:

PLEASE TAKE NOTICE THAT on April 28, 2017, pursuant to 28 U.S.C. § 1446, Defendant United Parcel Service, Inc. filed a Notice of Removal of this action with the United States District Court for the Northern District of California.

A true copy of the Notice of Removal is attached hereto as Exhibit A and served herewith.

DATED: April 28, 2017

GRUBE BROWN & GEIDT LLP

By: Elizabeth A. Brown / CYC
ELIZABETH A. BROWN

Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

PROOF OF SERVICE

I am employed in the City of San Francisco and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 601 Montgomery Street, Suite 1150, San Francisco, CA 94111.

On April 28, 2017, I served a copy of the within document(s):

NOTICE TO STATE COURT OF DEFENDANT UNITED PARCEL SERVICE, INC.'S NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT

on the interested parties:

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ADAM M. ROSE
FRONTIER LAW CENTER
23901 Calabasas Road, Suite 2074
Calabasas, CA 91302

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2017, at San Francisco, California.

Janet Gogna

Exhibit E

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case Number: CGC17557418
Title: CRAIG OGANS VS. UNITED PARCEL SERVICE, INC. ET AL
Cause of Action: OTHER NON EXEMPT COMPLAINTS
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Date	Proceedings	Document	Fee
2017-04-11	SUMMONS ON COMPLAINT (TRANSACTION ID # 17100014), PROOF OF SERVICE ONLY, FILED BY PLAINTIFF OGANS, CRAIG SERVED MAR-29-2017, PERSONAL SERVICE AS TO DEFENDANT UNITED PARCEL SERVICE, INC.	View	
2017-03-06	NOTICE TO PLAINTIFF	View	
2017-03-06	OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF OGANS, CRAIG AS TO DEFENDANT UNITED PARCEL SERVICE, INC. DOES 1 TO 100 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR AUG-09-2017 PROOF OF SERVICE DUE ON MAY-05-2017 CASE MANAGEMENT STATEMENT DUE ON JUL-17-2017	View	$450.00

Showing 1 to 3 of 3 entries

Previous 1 Next